

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 933 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHANSUKHLAL VITHALDAS RAJPUT (KHATRY)

Versus

JAYANTILAL SHANTILAL BULSARA

Appearance:

MR UC VYAS FOR MR BHARAT J SHELAT for Petitioner
MR DD VYAS for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/03/2000

ORAL JUDGEMENT

#. The petitioner is the tenant of the premises situated in the city of Valsad bearing census No.1925. The respondents-plaintiffs herein instituted a suit for possession on the ground that they are the owners of the suit property and that the defendant tenant has not paid taxes from 1964 , arrears of rent from 1.5.1974 and education cess also from 1.5.1974. A notice of demand

was also sent to the defendants on 5.8.78 for payment of arrears of rent as well as for handing over possession. Since the defendant did not comply with the same, ultimately the plaintiffs filed a suit being Regular Civil Suit no.310 of 1978 in the Court of Jt. Civil Judge (JD) at Valsad for getting a decree for possession.

#. The defendant appeared in the suit and filed written statement at exh.9. The defendant denied that he was in arrears of rent or was in arrears of any amount of tax. According to him he had sent the amount of rent by MO but the plaintiffs refused to accept the same. According to the defendant after the receipt of the suit notice, he had sent Rs. 520/- being the amount of rent for the period from 1.5.74 to 31.8.78 by MO. He also remitted Rs.38.07 as tax amount for 4 years and accordingly he had sent Rw.558.07 which was not accepted by the plaintiff. In that view of the matter the plaintiffs were not entitled to get possession of the suit premises. Ultimately the defendant prayed for the dismissal of the suit with costs.

#. The Trial Court framed various issues at exh.12 and thereafter after considering the arguments and the evidence both oral and documentary on record, came to the conclusion that the defendant tenant was in arrears of rent for more than 6 months and on that ground decree of possession was passed.

#. Aforesaid decree of the Trial Court was challenged by the defendant-tenant before the District Court , Valsad at Navsari by way of Regular Civil Appeal No. 76 of 1982. The Appellate Court dismissed the said appeal and accordingly the decree for possession which was passed by the Trial Court was confirmed by the Appellate Court.

#. The petitioner tenant has challenged the aforesaid order of the Appellate Court in the present Revision Application.

#. Mr. Udyan Vyas learned advocate for the petitioner tenant has submitted that the defendant has remitted the entire amount of rent along with the tax in response to the suit notice of demand under section 12(2) of the Rent Act. It was further submitted that even prior to the suit notice also the tenant used to send MOs towards the arrears of rent by regular intervals but the same were refused by the landlords. According to him therefore, it cannot be said that the tenant was negligent in paying the rent and therefore, in view of the evidence on record it should be presumed that the tenant was ready and

willing to pay the rent and he should have been protected under section 12(1) of the Rent Act. He submitted that the rent of the suit premises is Rs. 10/- and therefore, under the Gujarat Education Cess Act 1962, no education cess was payable by the landlord to the local authority because as per the provisions of the Act if the Annual Letting Value exceeds Rs. 300/- then only the premises is subjected to payment of education cess and inspite of the said fact, according to him, the landlords were demanding the amount of education cess and even the same was also paid by the tenant to the landlord and therefore there was no question of any rent due at the time of filing of the suit and therefore, aforesaid suit on the ground of arrears of rent was required to be dismissed.

#. So far as the question of payment of education cess is concerned, Mr. DD Vyas learned advocate for the respondent has also conceded that the suit premises is not subjected to tax assessment in view of the Annual Letting Value of the suit premises i.e. Rs. 120/- per year.

#. It is not in dispute that the demand notice was served by the plaintiffs to the defendant at exh.45. Aforesaid demand notice is dated 5.8.78. As per the aforesaid demand notice, a demand of Rs. 5.40 p.was made for water tax and Rs.4.12 for education cess. So total amount of Rs.9.52 p. was demanded in the suit notice towards arrears of tax. Rent at the rate of Rs. 10/p.m. was also demanded from 1.5.74 upto the date of the notice. The said amount comes to Rs. 520/-. Aforesaid notice was replied by the tenant by his reply at exh.53. The tenant pointed out in his reply at para 2 that the amount of tax was already paid to the original owner-Premiben. It was also pointed out in the reply that the defendant was not aware about the fact that after the death of original owner Premiben, her heirs inherited the property in question . It was also pointed out that the rent upto 30.3.74 was paid to the original owner Premiben including the amount of tax and thereafter for subsequent period, the tenant had sent various MOs to the original owner Premiben. But she had not accepted the same and therefore, said MOs returned back. However, the defendant also with the reply of the notice sent MO for Rs. 520/- covering the rent of the entire period. Along with the aforesaid amount of Rs.520/-, tax amount of last 4 years was also sent amounting to Rs.. 38.08 p. Therefore, detailed reply of the suit notice was given and along with the same, aforesaid amount was sent by way of MO. The landlord however refused the said MO and subsequently filed the aforesaid suit for possession.

#. The defendant tenant has stated in his evidence at exh.74 that even in the past on various occasions MOs were sent by him to the original owner Premiben but she was not accepting the same. Postal receipts of sending the MOs are produced on record at exh.76 to 81 showing the payment of rent by MOs between 1975 and 1976. It is the says of the defendant that after the death of original landlord Premiben, they never knew that present plaintiffs have become the owner of the suit property. There was no attornment notice to the defendant and the defendant came to know about the said fact only when the suit notice was served by the plaintiffs. In response to the aforesaid notice of demand, the defendant sent MO covering the entire period of rent for which a demand was made i.e. Rs. 558.78 p. The MO was sent in favour of plaintiff no.1 Jayantilal Shantilal Bulsara. Money order coupons are at exhs. 82 and 83. The same clearly substantiates the say of the defendant in this behalf. In that view of the matter it is abundantly clear that the defendant had sent the entire amount as well as the amount of tax of last 4 years within one month of the demand notice. Four years tax i.e. water tax and education cess was sent for the period between 1974 and 1978. It is not in dispute that said MO was also refused by the plaintiff landlord.

##. The idea of giving notice under section 12(2) of the Rent Act is to give the tenant an opportunity of paying the rent within a period of one month. If the entire amount of rent is paid within the said period, then naturally there is no cause of action available to the landlord for filing a suit on the ground of arrears of rent. The predecessor in title of the present plaintiffs Premiben had also filed a suit for eviction in the past on the ground of arrears of rent. Said suit was dismissed in the year 1974 and according to the defendant he was required to pay taxes from 1974 as upto that period he has cleared up all the arrears of rent and taxes and that is how he had sent the amount of tax for the period between 1974 and 1978 as stated earlier.

##. The Appellate Court came to the conclusion that before the said suit came to an end on 30.4.1974 and since in that suit the tax was claimed upto 1970, still the defendant was required to pay tax after 1970 and not from 1974. It is not in dispute that the entire arrears of rent was paid within one month of the suit notice. However according to the Appellate Court, the arrears of tax was required to be paid from 1970 onwards and not from 1974 onwards. However, according to the defendant

when the decree in the earlier suit was passed in the year 1974, naturally whatever was required to be paid as per the decree, he has already paid and therefore, naturally after 1974 he was required to pay tax which he was paying by MO but the plaintiffs were refusing to accept the same.

##. At this stage the question of liability of tenant regarding payment of tax is required to be examined. The petitioner - defendant has produced certificate of Incharge Chief Officer, Valsad Nagarpalika dated 4.6.1984. Said certificate is on record of this Revision Application. As per the said Certificate, the premises in question is not subjected to payment of education cess as Annual Letting Value of the premises is less than Rs. 300/-. Under the provisions of the Education Cess Act if the Annual Letting Value of any property exceeds Rs. 300/- then only it is subjected to education cess. The Annual Letting Value of the suit premises is Rs. 120/and therefore, it is clear that it was not subjected to education cess and even the certificate of the local authority is also clear to that effect. This Court in the case reported in 21(2) GLR 415 Abdul Karim Mahammadbhai Khalipha s. Suleman Haji Ismailbhai has held that education cess is not applicable to the premises if the Annual Letting Value did not exceed Rs.300/-. It is fairly conceded by Mr. D.D.Vyas for the respondent that the property in question was not subjected to education cess.

##. It is therefore, clear that when the demand notice was issued there was no question of payment of education cess by the tenant as the property in question was not subject to education cess. Still the plaintiffs in the past had recovered the aforesaid amount of education cess. They have not remitted the same to the local authority. If, therefore, the payment of education cess is not required to be considered then the defendant was required to pay only water tax which was at the rate of Rs. 5.40 p. and if the tax liability is to be considered from 1970, then also the entire tax can be said to have been paid at the time when the suit notice was given under section 12(2) of the Bombay Rent Act.

##. Therefore, looking to the facts of the present case, it is clear that within one month of the receipt of the suit notice the entire amount of arrears of rent was paid. Not only that even the amount of tax from 1974 to 1978 was paid in toto and therefore, it cannot be said that the tenant is not ready and willing to pay the rent. In view of the aforesaid facts and circumstances, in my

view the defendant was required to be protected under section 12(1) of the Bombay Rent Act and it can be said that he was ready and willing to pay the rent. It is pertinent to note that after the death of the original landlady Premiben, the petitioner was not aware who has succeeded the estate of the deceased and there was no attornment notice by which the defendant could have known the fact. Present plaintiffs have become owners of the suit property by virtue of the will of deceased Premiben. In view of the aforesaid evidence on record, it is clear that the defendant was most vigilant in payment of rent. He was sending MOs regularly even to the previous owner Premiben and after receiving the suit notice immediately he had tendered the entire arrears of rent and taxes of last 4 years. Though of course he was not required to pay education cess, yet he had sent the same. It is argued by Mr. UC Vyas for the petitioner that the defendant is so vigilant in payment of rent that in fact he deposited the rent upto 31.12.2000. He has produced receipt of such payment which is also on record. However the advance payment made during the pendency of this Revision Application is not relevant for deciding the controversy in question. However, according to Mr. Vyas learned advocate for the petitioner, all through out , the petitioner was vigilant . Even before filing of the suit also he was very vigilant and always ready and willing to pay the rent and permitted increases. If in my view therefore, when the tenant has paid the entire amount within one month from the date of receipt of the suit notice, there is no question of filing of the suit on the ground of arrears of rent as there was no cause of action for filing the suit. Mr. Uday Vyas learned advocate for the petitioner has relied upon the judgment of this court reported in 16 GLR 1002 Lilavati Dhirajlal Boradiya vs.Soni Harjivan Devjibhai. In that case the court has held that if the landlord refuses to accept the amount tendered by his tenant either by money order or in any other recognised mode of payment without any justification, the tenant is not bound nor is he under any obligation to go on repeating the remittances of the same amount over and over again. A landlord cannot try to take advantage of his own wrong and seek the recovery of possession of the premises. The Rent Act is a measure which is intended to protect the tenants. It is not a trap for the landlord to lay in order to draw his tenant in. In view of the aforesaid judgment therefore, it is clear that the petitioner who has sent MOs and if the landlord has refused the same without any reason, he cannot get benefit of his own wrong and therefore, no decree for possession on the ground of arrears of rent could have been passed and it is presumed that the tenant

is ready and willing to pay the rent. If the amount of education cess is not to be considered, then the tenant can be said to have paid more than what was due and on that basis also the tenant can be said to be absolutely regular in payment of rent during the trial and appeal. Even during the pendency of the proceedings before the Appellate Court entire amount of arrears of rent was paid. Even the tenant had paid the amount of education cess though he was not liable to pay the same. The landlord, even though he was not entitled to charge education cess, has taken the same for a long period. The defendant therefore, is entitled to adjustment of the said amount towards the water tax or even towards the principal amount of rent. In view of the aforesaid facts and circumstances of the case I am of the opinion that the petitioner-tenant was ready and willing to pay the rent and the landlord, after refusing to accept the MOs, could not have filed the suit on the ground of arrears of rent. In that view of the matter the Courts below have misread the evidence on record and ultimately committed an error of law in passing the decree for eviction on the ground of arrears of rent which could not have been passed and the tenant was entitled to protection under section 12(1) of the Bombay Rent Act.

##. The order of the Appellate Court confirming the decree of the Trial Court therefore, is required to be set aside. The suit of the plaintiffs being Regular Suit No.310 of 1978 is required to be dismissed and is accordingly dismissed. The order of the Appellate Court in Regular Civil Appeal No. 76 of 1982 confirming the judgment of the Trial Court passed in the Regular Civil Suit No.. 310 of 1978 is also set aside. The Revision Application is accordingly allowed. Rule is made absolute. No order as to costs.

(P.B.Majmudar.J)

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